"A debtor commits an act of bankruptcy . . . if a creditor has obtained a final judgment or final order against him for any amount and execution thereof not having been stayed has served on him in the Federation . . . a bankruptcy notice under this Ordinance requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order . . ."

In this case a final judgment or final order has no doubt been obtained by the petitioners against the defendant in Civil Suit No. 250 of 1956, but no such judgment or order has been obtained either in that suit or elsewhere against the surety, Mr. Liew.

In the case of a bail bond in criminal trials guaranteeing the production of the accused, proceedings may, if the accused fails to appear, be instituted without further formality against the bailor to forfeit his bond, but this is expressly provided for by legislation, section 404 of the Federated Malay States Criminal Procedure Code. In this case my attention has not been directed to any similar statutory provision to enable the petitioners to proceed direct against Mr. Liew in the absence of a separate judgment against him and in the absence of such statutory provision I must dismiss this petition, for I am not satisfied with the proof of the act of bankruptcy on the part of Mr. Liew. This petition is accordingly dismissed, with costs.

Petition dismissed.

Solicitors: *Bannon & Bailey;*

NAMBIAR v. CHIN KIM FONG

[O. C. J. (Adams J.) May 22, 1962]

[Johore Bahru — Civil Suit No. 74 of 1961]

Tort — Detinue — Car sent for repairs by plaintiff's insurance company — Demand for return after repairs — Bailment — Refusal to return unless plaintiff settled the repair bill or signed discharge form — Whether bailment terminated.

The plaintiff's car which was damaged in an accident was sent to the defendant's workshop for repairs by the plaintiff's insurance company. The repairs being unsatisfactory the car was sent back for fitting with new parts. The plaintiff visited the defendant's workshop from time to time and protested at the manner in which the new parts were fitted. On July 27, 1961, the defendant informed the plaintiff that the car was ready for delivery. On August 12 the plaintiff called on the defendant and demanded the return of the car which demand was refused unless the plaintiff settled the repair bill. Subsequently the plaintiff asked again for the return of the car but the defendant refused to release the car unless the plaintiff signed a discharge form stating that the repairs to the car were entirely satisfactory. The plaintiff refused to do so and instituted the present proceedings.

Held: the bailment was at an end once the repairs were completed and the defendant was not entitled to put a condition on the release of the car.

Cases referred to:—

(1) *Barnett* v. *The Crystal Palace* 175 E.R. 1134.

(2) *Cobbett* v. *Clutton* (1826), 172 E.R. 213.

(3) *Rosenthal* v. *Alderton & Sons* [1946] K.B. 374.

CIVIL SUIT.

T. G. Dunbar for the plaintiff.

A. J. Braga for the defendant.

Adams J.: This is an action in detinue by the plaintiff for the return of his Triumph Herald Motor Car JB 499 and damages for its detention. Fortunately the important and relevant facts are not in dispute. The only facts that are in dispute are not really material to any issue other than, perhaps, the reliability of the evidence of the witnesses. The facts are as follows. The plaintiff Mr. Nambiar is a junior technician employed in the Public Works Department and at the material times was resident at Rengam. His work involves the inspection and supervision of the maintenance and repair of the public highways and roads in his area. In order to carry out this work he bought himself a Triumph Herald Motor Car JB 499 from Keng San Motors which firm later became known as Lum Bee Motors at Kluang. He drew a car allowance from the Government in respect of the use of this car. The person who sold him the motor car was Mr. Woo Kai Liap, and it was also Mr. Woo Kai Liap who arranged for the comprehensive insurance of the motor car with the Safety Insurance Company Ltd. of which he was the Kluang agent. On the 4th September, 1960, the motor car which was just about six months old was involved in an accident in which the bonnet, one of the wings and one of the doors were severely damaged. Mr. Nambiar immediately advised Mr. Woo Kai Liap as agent of the Safety Insurance Company Ltd. and also the Head Office of the Insurance Company concerning the accident. He arranged for the vehicle to be towed to a workshop in Simpang Rengam.

Mr. Nambiar says that some ten days later an inspector from the Insurance Company came down and inspected the car. There is a dispute as to where this took place, but it is immaterial. Mr. Nambiar requested that the car be repaired by the local agents, that is to say Century Motors in Singapore, but this was not permitted and he was advised that the repairs would be carried out by a local repairer at Kluang. This was the defendant's firm. In the event the defendant was instructed by the Safety Insurance Company Ltd. to carry out the repairs to the extent of $600 by panel beating and not by the substitution of new parts. It is apparent that this repair was not satisfactory, because later after complaint by the plaintiff the Insurance Company ordered the defendant to fit new parts and these were ordered through Mr. Woo Kai Liap. There is a considerable divergence of opinion as to what happened after this, but I consider that most of this is immaterial to the issues that fall to be decided. It suffices to say that the plaintiff visited the defendant's workshop from time to time and was not satisfied with the fitting of the new parts which were being hammered into place whereas they should

have been fitted without hammering. Toward the end of April when he was with Mr. Kumaran (P.W. 3) he protested. For the first time the plaintiff was told that he would not receive the car back until he had signed a document which later transpired to be the document P.4 which reads as follows:—

"Safety Insurance Co. Ltd.
Agent 21. Jalan Tengku Makota Ismail.
Kluang, Johore.

RE: ACCIDENT CAR TRIUMPH HERALD
REGISTRATION No. JB. 499.

Dear Sir,

Received the above car's repair to my entire satisfaction from Sin Hin Spraying Works, Kluang."

Apparently at that time he made no demand for the return of the car. On the 27th July, 1961, Mr. Nambiar received a letter from the defendant (P.3). This letter said that the car had been ready since the 25th March which it certainly could not have been. The letter complained further that the plaintiff had not collected it nor had he paid for the repair. The letter threatened legal action and disposal of the vehicle. Mr. Nambiar called on the defendant on the 12th August, 1961, and demanded the return of the car. This was refused by the defendant unless the plaintiff settled the repair bill of $900. He went back again on the 12th August with Mr. Kumaran but the defendant was not in, and he called again on the 16th August with Mr. Gartari Lal Bangah, the Technical Assistant of the Public Works Department at Kluang. There the plaintiff again asked the defendant if he could collect his car. The defendant refused to release the car unless the document P.4 was first signed by the plaintiff. This the plaintiff refused to do, and they left. The plaintiff's solicitors then wrote a letter on the 31st August, 1961 (P.5) demanding the return of the car unconditionally. The defendant answered this by letter dated the 4th September, 1961 (P.6) in which he said he would return the car if the plaintiff signed the discharge P.4. The plaintiff's solicitors wrote again on the 28th October saying that the plaintiff would call on the 30th October to take delivery of the car. It was stated that the plaintiff refused to sign the document P.4, but would be prepared to sign a receipt on taking possession of the car. Mr. Nambiar duly attended at the defendant's workshop on the 30th October with Mr. Gartari Lal Bangah. The defendant persisted in his refusal to release the car without the signature by Mr. Nambiar on the document P.4 and the present proceedings are the result.

The defendant denied that any of the alleged meetings at which Mr. Kumaran and Mr. Gartari Lal Bangah were present ever took place. But he admits that he refused to release the vehicle without the signature of the document P.4. I do not have to decide which version is the truth because the defendant admits that the plaintiff did demand the return of the car and that the defendant refused to return it without the signature on the document P.4 However it is difficult to believe that either Mr. Kumaran or Mr. Gartari Lal Bangah would come to Court to commit deliberate perjury.

Detinue is the adverse detention of specific goods and it follows that since the plaintiff's motor car was bailed to the defendant by the Safety Insurance Company Ltd. for the purpose of effecting repairs in pursuance of their contract of insurance with the plaintiff, the plaintiff must prove that the bailment was terminated and that the defendant was wrongfully withholding the possession of the motor car from the plaintiff who was the true owner thereof. The defendant clearly recognised that the bailment was at an end once the repairs were completed. The terms of his letter dated 27th July, 1961 (P.3) indicate this. The only question therefore that falls to be decided in this case is whether or not the defendant was entitled to put a condition on the release of the plaintiff's motor car, in this case to insist upon the signature of the document P.4 before the motor car was released by the plaintiff. The reason for the existence of this document was that the plaintiff had proved himself to be a prudent person who insisted that the work be properly done. After all that is what he had paid his premium for. From the very beginning he distrusted the local repairer and wanted a good and workmanlike job made of the repairs by sending the car to the main agents in Singapore. Mr. Woo Kai Liap described the plaintiff as being troublesome and said that the document P.4 was to put an end to Mr. Nambiar's demands. No such documents as P.4 was demanded from the plaintiff when the car was released to him after the completion of the first lot of repairs.

Mr. Dunbar pointed out that lien has not been specifically pleaded, and is not relied upon. He then argued that on the authority of *Barnett* v. *The Crystal Palace*[1] the defendant had no right whatsoever to withhold delivery of motor car after it had been demanded from him. In that case a mere refusal to deliver up the goods without the issue of a receipt was held to be sufficient to enable the plaintiff to recover. In this case, the plaintiff was being asked to sign what virtually amounted to a release to his Insurance Company and the defendant against any bad work without having seen the vehicle. Very obviously the first effort to repair the vehicle had been an unworkmanlike job, and it appears to me that it was quite an unreasonable request. The plaintiff in fact offered to give a receipt for the vehicle. Mr Braga argued that the defendant had a right to insist on the signature of the document P.4. He had not been paid by the insurance company and would not be paid unless he produced the document P.4 executed

by the plaintiff. But there was no claim of lien set up here. It was never suggested that the plaintiff was bound by any contract with his insurance company to execute such a document. I do not think that paragraph 125* in *Halsbury* (2nd Edn.) Vol. 33 at p. 74 cited by Mr. Braga helps. It seems to me that the plaintiff was absolutely entitled to have his car back once the repairs were completed and as Abbott C.J. said in *Cobbett* v. *Clutton*[2]:

"The defendants had no right to insist upon an inventory before they delivered the box. The plaintiff as executor was entitled to the possession of the papers of the deceased, and that being so he is entitled to recover in this action."

It is true that that case was laid in trover, but conversion by detention and detinue are practically identical, and the principles laid down by Abbott C.J. apply here since the plaintiff was the rightful owner of the vehicle and was entitled to the possession thereof. There can in my opinion be no question of *jus tertii* here. The defendant must plead that he did the act by the order of a third person whom he must name and he must show that such third party, (the insurance company here) had such a right. It had no such right. It may well have been a matter of prudence to demand that the plaintiff should sign a document expressing satisfaction that the work had been properly done and thereby relinquishing all further claims. But so was it a matter of prudence for the solicitors in the *Cobbett* v. *Clutton* case[2] *supra* to demand an inventory and a receipt, more especially when their client had instructed them to do so. Prudence is not enough there must be a legal right to withhold delivery, and there was none here. The plaintiff is therefore entitled to succeed in his action.

The plaintiff, requiring as he did a motor car for the efficient fulfilment of his duties at first hired a car at $10 per diem. This was established to be a reasonable figure. He found that he could not afford to pay hire charges of $300 per mensem and so he bought a new car. This was a Simca. This cost $6,550 as against a new Triumph Herald which would have cost $5,600. What therefore the plaintiff is claiming is the return of the Triumph Herald JB 499 or its value which, as it was then six months old is put at $5,000, and damages for the detention of the car which are worked out on the depreciation of the Simca. This Mr. Dunbar argued was a mitigation of damage which would have been considerably more if it were based on hire at the rate of $10 per diem. This seems to me to be fair enough. It appears to me therefore that the figure of $2,050 claimed is reasonable. But the value of the goods claimed but not returned must be assessed as at the date of judgment (see *Rosenthal* v. *Alderton & Sons*)[3] and in view of the evidence of Mr. Lee Ban Heng (who is himself a second hand motor car dealer) who put the value of a Triumph Herald at $4,500 to $4,600 after six months there must be further depreciation in view of the fact that another eighteen months have passed between the date of the accident and the date of judgment, and I would reduce the amount claimed as the value of the vehicle by $1,000 making the present value of the motor car JB 499 to be $3,600, taking Mr. Lee Ban Heng's figure of $4,600 as its correct value at the time of the accident.

There must be judgment for the plaintiff. The defendant must return the Triumph Herald JB 499 to the plaintiff forthwith or pay to the plaintiff the value thereof of $3,600, and the defendant must pay damages to the plaintiff for the detention of the said motor car amounting to $2,050. The defendant must also pay the plaintiff's taxed costs of this action.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; A. J. Braga.*

* See now para. 1330 in *Halsbury* (3rd edn.) vol. 38 at p. 799.

WEE BAN YAN v. EYUN ENG LOWI

[A. C. J. (Hashim J.) June 17, 1962]

[Kota Bharu — Civil Appeal No. 1 of 1962]

Landlord and Tenant — "Tenant" — Meaning of — When widow becomes "tenant" — Personal occupation of premises at time of husband's death — Control of Rent Ordinance, 1956, s.2.

A widow in order that she may be a "tenant" within the meaning of the Control of Rent Ordinance must be in personal occupation of the premises at the time of her husband's death.

Khadijah binti Abdullah v. *S.I.A. Alsagoff*[3] not followed.

Cases referred to:—

(1) *The Mercantile Bank of India (Trustees) Ltd.* v. *Ruth Nicholas* [1949] M.L.J. 104.

(2) *Kam Sam Mooi* v. *Shin Heong Leong* [1959] M.L.J. 249.

(3) *Khadijah bte. Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

CIVIL APPEAL.

A. Jayadeva for the appellant.

H. L. Wrigglesworth for the respondent.

Hashim J.: In this case the learned President gave judgment in favour of the plaintiff and ordered the defendant to vacate premises No. 112 Jalan Besar, Pasir Mas on or before February 1, 1962.

I do not propose to interfere with the learned President's finding on facts. He found the following facts:—

(a) The plaintiff, a married woman, is the owner of a shop-house No. 112 Jalan Besar, Pasir Mas.

(b) The premises were let to Chew Choon Yan at a rental of $30 monthly in 1946 and was and is still used for the purpose of a rubber dealers' business.

(c) In 1954 Chew Choon Yan married Wee Han Choo.